

## REMARKS

Favorable reconsideration, reexamination, and allowance of the present patent application are respectfully requested in view of the foregoing amendments and the following remarks.

### Specification

By this Amendment, Applicant replaces the original multi-paragraph Abstract with a single paragraph Abstract of the Disclosure. Withdrawal of the objection to the Abstract of the Disclosure is respectfully requested.

### The Claims Define Allowable Subject Matter

#### Claim 1

In the Office Action, beginning at page 2, claim 1 was rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,210,385 to Mizutani (the '385 Mizutani patent). This rejection is respectfully traversed for the following reasons.

Under 35 U.S.C. § 102(b), "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (citing *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

In the present application, claims 1-7 recite a combination of features including, in part, "resilient body which is fixed at least to the absorbent in a center region in a lateral direction of the product and imparts a contracting force to the absorbent with respect to the longitudinal direction." At least this feature of claim 1 is neither taught nor suggested by the '385 Mizutani patent.

In the Office Action, the '385 Mizutani patent is characterized as follows: "panel member 16 is stated to be resilient and is fully capable of imparting a contracting force to the absorbent in

a longitudinal direction.” While Applicant agrees that panel member 16 is disclosed as being formed of a resilient material at column 3 lines 53-55 of the ‘385 Mizutani patent, Applicant disagrees that the ‘385 Mizutani patent discloses or otherwise teaches a resilient body that imparts a contracting force with respect to the longitudinal direction. In fact, the object of the panel member 16 in the ‘385 Mizutani patent is exactly opposite....namely, column 3 lines 33-35 of the ‘385 Mizutani patent discloses that the panel member 16 is formed such that it can be convexly formed around the central zone 18 (which lies along the longitudinal axis of the absorbent article). Thus, as shown in all of the ‘385 Mizutani patent figures, panel member 16 causes the absorbent core of the absorbent article to form a convex ridgeline along the central zone (longitudinal axis) such that the top sheet 6 of the central longitudinal axis of the absorbent article remains in contact with the wearer of the article during use.

Hence, the ‘385 Mizutani patent fails to disclose at least the feature of a resilient body which imparts a contracting force to the absorbent with respect to the longitudinal direction, as recited in claim 1. Since the ‘385 Mizutani patent fails to disclose each and every feature of claim 1, the ‘385 Mizutani patent fails to anticipate claim 1. Thus, Applicant respectfully request that the rejection of claim 1 under 35 U.S.C. § 102(b) be withdrawn.

#### **Claims 2-5**

In the Office Action, beginning at page 3, Claims 2-5 are rejected under 35 U.S.C. § 103(a) over the disclosure of the ‘385 Mizutani patent in view of U.S. Patent No. 4,886,513 to Mason Jr. *et al.* (the ‘513 Mason patent). This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

It is respectfully submitted that the combination of references, as suggested in the Office Action, would result in an inoperative device and/or destroy the intended purpose of the base reference to Mizutani, and is thus not an obvious combination of references. In particular, the

'513 Mason patent discloses the use of typical reinforcing members 14, 50, 82, and 158 that allow an absorbent pad to maintain its curved shape, resist bending and twisting, and perform its intended functions. In the Background section of Applicant's specification, a similar type of known curved absorbent pad is described at paragraph [0006], in which a known curved absorbent pad that includes a "crotch gather structure" is disclosed. As described in detail in the specification, the present invention is different from this type of known curved absorbent pad device.

Modification of the '385 Mizutani patent device with the reinforcing members of the well known curved absorbent pad disclosed in the '513 Mason would not have been obvious for a couple of reasons. In particular, modification of the resilient panel member 16 of the '385 Mizutani patent to be resilient mainly along the longitudinal direction (as suggested in the Office Action) would result in a device that is inconsistent with the objectives and stated purpose of the '385 Mizutani patent. For example, the '385 Mizutani patent indicates that the resilient panel member 16 is convexly deformed around the central zone 18 (longitudinal axis) towards the body facing side 4. This disclosure is directly opposed to the suggestion in the Office Action that the resilient panel member 16 can be made to be resilient mainly along the longitudinal axis. Thus, it is respectfully submitted that one of skilled in the art would not have been motivated to modify the '385 Mizutani patent with the teaching of the '513 Mason patent because it would have destroyed the base reference's intended purpose.

The '513 Mason patent also fails to make up for the above-noted deficiencies of the '385 Mizutani patent. In particular, the '513 Mason patent fails to disclose or teach at least the feature of a resilient body which is fixed at least to the absorbent in a center region in a lateral direction of the product and imparts a contracting force to the absorbent with respect to the longitudinal direction, as recited in claim 1 (and therefore also a feature of dependent claims 2-5). By contrast, the '513 Mason patent discloses a number of different resilient members that provide a frame about the periphery of different portions of an absorbent pad.

The Office bears the initial burden of establishing a *prima facie* case of obviousness. M.P.E.P. § 2142. If the Office fails to set forth a *prima facie* case of obviousness, Applicant is

under "no obligation to submit evidence of nonobviousness," such as unexpected results or commercial success. *Id.* In other words, if the Office fails to meet the initial burden of establishing a *prima facie* case of obviousness as to a given claim, then that claim is not obvious without any specific evidence of nonobviousness by Applicant.

In order to establish a *prima facie* case of obviousness, the Office must satisfy three requirements. M.P.E.P. § 2142. First, "the prior art reference, or references when combined, must teach or suggest *all* the claim limitations." *Id.* (emphasis added). Second, the Office must show that there is "some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." *Id.* Finally, "there must be a reasonable expectation of success." *Id.*

In this case, as set forth in detail above, there is no reasonable expectation of success because the base reference to Mizutani would be destroyed by the suggested combination with the '513 Mason patent teaching. In addition, there is no *prime facie* case of obviousness because at least the feature of a resilient body which is fixed at least to the absorbent in a center region in a lateral direction of the product and imparts a contracting force to the absorbent with respect to the longitudinal direction, as recited in the claims, is absent from both of the cited references, either alone or in combination. In addition, there would have been no motivation to combine the references as suggested because it would have been unreasonable to shape the Mizutani device in the manner disclosed by the '513 Mason patent without destroying the intended purpose of the Mizutani device.

For at least the above reasons, it is respectfully submitted that the combination of the '385 Mizutani patent with the '513 Mason patent is not appropriate, and that the rejection of claims 2-5 under 35 U.S.C. § 103 is in error. Accordingly, withdrawal of the rejection is respectfully requested.

#### **Claims 6 and 7**

In the Office Action, beginning at page 5, claims 6 and 7 are rejected under 35 U.S.C. §

103(a) over the disclosure of the '385 Mizutani patent in view of U.S. Patent Application No. 2002/0013563 to Lassen *et al.* (the '563 Lassen application). This rejection is respectfully traversed, and Applicant requests reconsideration for at least the following reasons.

The '563 Lassen application fails to make up for the above-noted deficiencies of the '385 Mizutani patent. In particular, the '563 Lassen application fails to disclose or teach at least the feature of a resilient body which is fixed at least to the absorbent in a center region in a lateral direction of the product and imparts a contracting force to the absorbent with respect to the longitudinal direction, as recited in claim 1 (and therefore also a feature of dependent claims 6 and 7). By contrast, the '563 Lassen application discloses an absorbent article for absorbing body fluids that includes an absorbent core positioned between a fluid-permeable cover and a fluid-impermeable baffle. The absorbent core includes a central, longitudinal flexure axis which substantially extends the length of the absorbent core. The central, longitudinal axis generally divides the absorbent core into first and second longitudinal members having an outer boundary. Third and fourth absorbent members are positioned so that, when said absorbent article is subjected to lateral compressive forces, the first and second members preferentially bend convexly upward, and said absorbent core generally acquires a "W" shaped configuration. There is no disclosure or teaching, either alone or in combination with the '385 Mizutani patent, of a resilient body which is fixed at least to the absorbent in a center region in a lateral direction of the product and imparts a contracting force to the absorbent with respect to the longitudinal direction, as recited in claim 1. Because neither the '385 Mizutani patent nor the '563 Lassen application, either alone or in combination, teach the above-referenced feature, as well as other features, of Applicant's claim 6 and 7, it is respectfully submitted that there is no *prime facie* case for obviousness.

#### **Claims 8-14**

Claims 8-14 are added by this Amendment to include claims having an alternate scope of patent protection.

### **Conclusion**

Applicant respectfully submits that the present patent application is in condition for allowance. An early indication of the allowability of this patent application is therefore respectfully solicited.


If the patent examiner believes that a telephone conference with the undersigned would expedite passage of this patent application to issue, they are invited to call on the number below.

### **Constructive Petition**

- [X] **Except** for issue fees payable under 37 C.F.R. §1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including filing fees, fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, and any required extension of time fees, or credit any overpayment to Applicant's representative's Deposit Account cited in the application transmittal originally filed with this application. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. §1.136(a)(3).

Respectfully submitted,

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